

Minutes

Labor-Management Advisory Council

May 6, 2008

1:00 p.m., Great Northern Hotel, Helena

Advisory Council members present: Lt. Governor John Bohlinger, Bill Dahlgren, Annette Hoffman, Don Judge, Jason Miller, Danny Lee, Doug Buman, Bob Worthington, Connie Welsh, Riley Johnson, Jacquie Helt, Jerry Keck

Project team members present: Diana Ferriter, Keith Messmer, Jeanne Johns, Dave Elenbaas, Lucy Jeffrey, Emily Rufo, Tyler Wiltgen, Sharon Peterson, Connie Ferriter, Mari Kindberg, Debbie Blossom, Judy Bovington, Mark Cadwallader, Anne Wolfinger

Others present: Chrys Juneau, Heritage Propane; Dan Gengler, Curtis Larsen, Peter Strauss, Nancy Butler, Montana State Fund; Larry Jones, Liberty Northwest; Mike Taylor, NCCI; Mari Kindberg, Mary Arnold, Pam Daugherty, State Auditor's Office; Jim McGarvey, AFL-CIO; Jon Bennion, Montana Chamber of Commerce; John Gottbreit, Putnam Associates; Patrick Sweeney, PacBlu; Christine Almeida, Medtronics.

I. Welcoming & Introductions

All present introduced themselves.

II. Approval of Agenda/Minutes

The agenda was approved. The minutes of the March 4, 2008, meeting were approved.

III. NCCI Update for Montana

Mike Taylor, Regulatory Services, NCCI, reported on their latest rate filing, effective July 1, 2008 which was a reduction of 1.8%. This decrease and those in July 2007 and February 2008 have resulted in premium reductions of \$22 million.

NCCI also priced what the saving would be if the frequency of injuries were to be reduced to the national average and if return-to-work times were reduced to the national average. The frequency savings would be 37.5% of premium or \$145 million. Return to work savings (35,000 weeks of benefits) would amount to 3.5% of premium or \$12.5 million.

Mike also reported that the medical facility fee schedule will save under 1% of premium. He stated that NCCI is unable to price the savings from closing claims because their analysis uses paid amounts and does not incorporate reserves.

He also announced that the NCCI State Advisory Forum would be scheduled for May 20th at the Best Western Great Northern and that the forum will include an analysis of the sixth edition of the AMA Impairment Guide.

IV. Claims Closure/Settlement

Diana Ferriter provided more information on the topic of claims closure/settlement discussed at the last two LMAC meetings. She added the Oregon premium rankings for each of the states listed on the spreadsheet. The spreadsheet was handed out at the last meeting and lists the states'

claim closure provisions. There is no correlation between the premium ranking and the states' closure provisions.

Diana presented the department recommendation to make no changes to the settlement provisions, since no savings could be shown. The department also recommended allowing for automatic closure of all benefits if not used within 60 consecutive months. The primary projected savings on closing these claims would be that they would not be included in court case decisions.

Don Judge moved and Danny Lee seconded that there be no changes made to the settlement provisions. After considerable discussion, Don withdrew his first motion and moved that the committee take no action at this time. Bob Worthington seconded the motion and it passed unanimously on a voice vote.

V. Claims Examiner Licensing

Diana Ferriter and Riley Johnson reported on the results of the subcommittee reviewing claims examiner licensing. Diana reviewed SB511 from the 2007 legislative session which did not come out of committee, but referred the issue of examiner licensing to the LMAC for study. The committee that the LMAC established met with interested parties on April 2 and 29. At the final meeting a consensus was reached on a voluntary certification process administered by the Department of Labor and Industry.

Diana handed out a concept document detailing the certification proposal. The proposal is for a voluntary two-year certification, with the funding coming from the administrative assessment. A nominal fee may also be charged to the applicant. The Employment Relations Division (ERD) would be responsible for administering the certification process. There would be an exam initially to become certified and claims examiners with a number of years of experience and education could be initially grandfathered into the program. For renewal of the certification a number of continuing education credits would be required every two years to coincide with the State Auditor Adjuster licensing requirements. The Department would work with an advisory group of volunteers to work out the details of the certification process. If the LMAC approves the concept, the Department has concluded that it will need legislative authority to be able to spend money and administer this program.

Diana also handed out information that Janine Brown put together which she called "An Injured Worker's Three Single Wishes." This included licensing of claims examiners, an 800 number for claimants with questions to call, and a website for injured workers to interact with other injured workers. Diana suggested that the Department could establish an 800 number and set up a website with information including frequently asked questions.

After some discussion, Riley motioned for passage of the proposal with Don seconding. The LMAC unanimously approved.

After some comments from the audience Jerry Keck suggested that the LMAC could look at the "course and scope" provisions in the statute in light of the recent court decisions. Diana reported that her staff had done a survey of course and scope definitions from other states and she will bring that information to the next meeting. Bob asked that this topic be placed on the agenda of the next meeting.

VI. Preliminary Findings of the Injured Worker Return-to-Work Survey

Tyler Wiltgen reported that 5,213 surveys were emailed out to injured workers. Only 221 online responses were received and they are now mailing surveys in order to improve the response rate. He said that the preliminary results are very interesting and will provide a lot of good information for him to work with.

VII. WorkSafe MT

Georgiana (George) Kochman reported on the WorkSafe MT committee. The program will be based on a model of private/public cooperation. The board will not have paid members. It is estimated that it will take \$5 to \$6 million dollars annually to establish an effective ad campaign that will change the culture of workers to work safely, both on the job and in their personal lives. The Department of Labor and Industry will provide working capital to fund the work initially. The concept is that this not be a government program, but it will use public funds. There will be 20 to 30 initial board members in order to have representation of the interested parties and the industries with the most dollars spent on injuries. Board members will be targeted and those interested in serving on the board will need to complete an application expressing their interest and whom they could represent. Board members may also be asked to help fund the program.

George had a handout of injury counts and dollars spent for medical care on those injuries broken down by industry group. She also handed out a brainstormed listing of those groups that should be represented on the board. She also asked for suggestions for individuals to represent these groups by Friday, May 9th. Once potential members are identified they will be contacted and asked to apply. Jerry Keck and LMAC volunteers will review the applications and make selections of the board members.

Jerry reported that he has been evaluating how the WorkSafe MT program could be funded. It could be funded through the general fund (highly unlikely to get support) or through the administrative assessment, which would mean an increase from 3% of indemnity and medical payments to 5 to 6% of these payments. Another source could be assessing the 2.7% assessment that is levied against private insurance carriers against the State Fund. The department will do additional research and bring alternatives to the next meeting of the LMAC.

VIII. Medical Topics

Keith Messmer reported that the Montana Facility Fee Rules have been drafted and a rule hearing will occur on May 16, Room 152 of the Capitol to receive comments. The fee schedule incorporates the Medicare methodology of using MS-DRGs and APCs for payments and overall rates for inpatient and outpatient hospital rates were set at 165% of Medicare. For ASCs, Medicare pays 67% of the hospital outpatient payments. The department has proposed that the rate be set at 175% of Medicare because of data shared by the ASCs that indicated that Medicare had set rates too low for them. The draft rules include a provision that hospitals and ASCs provide data on payments by Medicare, Medicaid and group health insurance payers, so the department can more accurately determine where rates should be set in the future.

IX. Legislative Concepts

Jerry Keck handed out the legislative ideas that have been raised within the department and by the LMAC to date. He reported that legislation coming from the LMAC will have to be drafted in time to bring it to the legislative subcommittee meeting in mid-July. All other agency bills will need to be drafted by September. The department will start drafting the LMAC legislative items.

X. 60 Summits Montana Preliminary Report

George Kochman, ERD, and Paige Tabor, Department of Administration, reported on the 60 Summits meetings that were held in April. Over \$23,000 was raised to fund the project by Peter Strauss and Carl Kochman of Montana State Fund. Approximately 85 participants attended in Billings, 76 in Great Falls and 90 in Missoula. Dr. Jennifer Christian and Diane Cline will have the final report to us in about six weeks. Twenty physicians participated in the Summits. LMAC members reported individually on their thoughts of the Summits. All comments were extremely positive.

Doug Buman reported on the Centers of Occupational Health and Education (COHE) program in Washington State. This program has been in existence for about five years and is very similar to the concepts talked about in 60 Summits. Each doctor participating in the program must be trained and must complete an "Activity Prescription" form in order to be paid. The form contains talking points for the physicians to address with the injured workers about return to work. The COHE has demonstrated savings of \$819 to \$1,279 on each claim and attorney involvement has been reduced about 50%. Doug offered to have a COHE representative come to the next LMAC meeting to talk about the program and also the ombudsman program there.

XI. Public Comment

Public comment was taken.

XII. Next Steps

Jerry reported that there would be interim work done on the WorkSafe MT initiative and a first meeting of the board on June 26. The department will also bring back information for the course and scope of employment discussion.

XIII. Next Meeting

Tuesday, July 1, 2008, Best Western Great Northern, Helena